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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/396,612 09/15/99 STEVENS J 5016-(MEDO-5

EXAMINER

TM02/1009

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ART UNIT

PAPER NUMBER

2167

DATE MAILED:

10/09/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

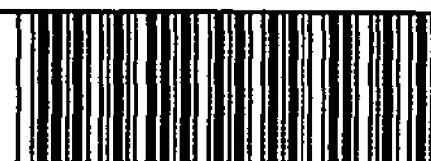
# Office Action Summary

Application No.  
09/396,612

Applicant(s)  
Stevens et al.

Examiner  
O'Connor

Art Unit  
2167



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE one MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above, claim(s) none is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claims 1-23 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

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## DETAILED ACTION

### *Election/Restriction*

1. Restriction to one of the following two inventions is required under 35 U.S.C. 121:
  - I. Claims 1-10, drawn to a method of data processing to perform inventory management by means or steps comprising itemization of parts, supplies, or services, classified in class 705, subclass 29.
  - II. Claims 11-23, drawn to an automated system for knowledge processing, classified in class 706, subclass 45.
2. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that *either*: (1) the process as claimed can be practiced by another, materially different apparatus, or by hand, *or* (2) the apparatus as claimed can be used to practice another, materially different process. (MPEP § 806.05(e)).

In this case, the process as claimed can be practiced using another, materially different apparatus, or by hand, such as an automated control logic apparatus incapable of receiving a list and/or generating a trend, but capable of generating a smart list in accordance with a manually determined/generated shopping list trend.

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3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. A telephone call was placed to Mr. Jeremy J. Curcuri (Reg. N<sup>o</sup> 42,454), attorney of record for applicant, on October 3, 2001, to discuss an oral election to the above restriction requirement, but the call did not result in an election being made.
5. Applicant is advised that a reply to this requirement, to be complete, *must* include an election of the invention to be examined, even if the requirement be traversed (37 CFR 1.143).


***Conclusion***

6. Any inquiry concerning this communication, or earlier communications, should be directed to the examiner, Jerry O'Connor, whose telephone number is (703) 305-1525.

GJOC



October 3, 2001

  
ROBERT P. OLSZEWSKI  
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